

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

ERIC GUNTHER, individually and on behalf of all others similarly situated,  Plaintiff,  v.  CAPITAL ONE, N.A. d/b/a CAPITAL ONE BANK,  Defendant.	Case No. 09-cv-2966 (ADS) (AKT)  Arthur D. Spatt, USDJ A. Kathleen Tomlinson, USMJ
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**PLAINTIFF’S AND CLASS COUNSEL’S MOTION FOR PAYMENT OF  
CLASS COUNSEL’S ATTORNEYS’ FEES AND REIMBURSEMENT OF COSTS**

Plaintiff, by and through his counsel and Class Counsel, will respectfully move this Court at the Fairness Hearing scheduled for December 7, 2010 for an award to Class Counsel of attorneys’ fees and reimbursement of costs in the amount of \$750,000.00 pursuant to Rule 23(h) of the Federal Rules of Civil Procedure and Paragraph 37(a) of the parties’ Amended Class Action Settlement Agreement.

As set forth in the accompanying Memorandum of Law in Support of Plaintiff’s and Class Counsel’s Motion for Attorneys’ Fees and Reimbursement of Costs (the “Memorandum”), Plaintiff’s and the Classes’ Memorandum of Law in Support of Class Action Settlement, the Declaration of Joseph S. Tusa and the Declaration of Joseph P. Guglielmo, defendant Capital One, N.A. d/b/a Capital One Bank has agreed to pay Class Counsel up to \$750,000.00 in attorneys’ fees and expenses, subject to Court approval in recognition of the time and efforts expended by Class Counsel in the action for Plaintiff and the Settlement Class.

Accordingly, Plaintiff and Class Counsel respectfully request that Class Counsel's motion for attorneys' fees and reimbursement of costs be granted in their entirety.

Dated: November 29, 2010

Respectfully Submitted,

**SCOTT+SCOTT LLP**

/s/ Joseph P. Guglielmo  
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***Plaintiff's Counsel and Class Counsel***